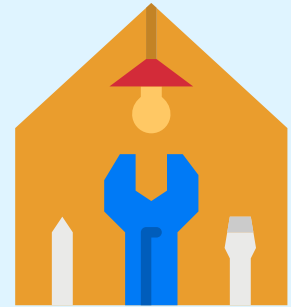


Defenses to Non-Payment Proceedings: Problems With Your Apartment Living Conditions

A step-by-step guide to help you navigate the legal system.

All residential leases in New York State come with an implied “warranty of habitability” if you have problems with your living conditions. This means that all landlords have a legal obligation to provide residences that are fit for human habitation.

If your landlord sues you for nonpayment of rent, especially if you have withheld rent or incurred expenses as a result of unaddressed repair issues, you can raise the warranty of habitability as a defense.



Things to know if you are ever in this situation:

- 1. Raise the defense.** If you are a defendant or a respondent in a court proceeding, it is your obligation to raise any defenses that you want the court to consider. When your case is called and you are standing in front of the judge, you have to say that you want to raise the warranty of habitability as a defense to the proceeding or it will not be considered.
- 2. A successful defense will result in a rent abatement.** If your defense succeeds, the court will “abate” your rent obligation, meaning you will not be responsible for paying some percentage of your monthly rent, as determined by the court, during the months your habitability were violated. You are still responsible for the difference in rent and can be subject to eviction if you do not pay those amounts.
- 3. Raise a counterclaim.** If your landlord’s failure to provide a habitable living space caused you to incur losses or expenses, you can raise a counterclaim and ask the court to find that the landlord was responsible for those losses or expenses. (in addition to your warranty-of-habitability defense)
- 4. Bring your proof!** You will need to provide proof that you asked the landlord to make a repair and that the landlord failed to do so within a reasonable amount of time. You will also need to prove that the condition of the unit was not habitable and/or that you actually incurred any losses or damages that you claim.
- 5. Ask the court to order repairs** while the case is pending. You will have at least two appearances: an initial appearance, (where you raise the defense), and a trial date. Prior to trial, you can ask the court to order your landlord to make any necessary repairs, and the court should do so.

Pro-Tip!

An eviction proceeding is an important event. Contact LSHV to get help. Definitely **go to each appearance prepared**. When you appear before the judge, avoid interrupting anyone (especially the judge!), but be sure to ask for the opportunity to say anything that you believe is important for the judge to hear.